

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
 _____ _____ _____ _____

California Public Sector Labor Relations

Publication 176

Release 25

September 2014

HIGHLIGHTS

- Recent Case Updating.
- Recent PERB Decisions.
- Recent Legislation.

Representation Under EERA, HEERA, Dills Act

Children of Promise Preparatory Academy (2013) PERB Order No. 402. PERB's initial determination of the sufficiency of proof of support for a representation petition remains valid throughout PERB's subsequent investigation of the appropriateness of the petitioned-for unit. If PERB ultimately determines that a different unit is appropriate, an election may be conducted in the revised unit to determine employee support. *See Ch. 5.*

Representation Under MMBA, TCEPGA, TCIELRA, EEER

County of Amador (2013) PERB Dec. No. 2318-M. When an agency's local rule governing a representation matter directly conflicts with the MMBA, a PERB regula-

tion on the same matter will apply instead. *See Ch. 6.*

Duty to Bargain

City of San Jose (2013) PERB Dec. No. 2341-M. The Board held that there is no categorical rule that a single indicator of bad faith is insufficient to demonstrate bad faith bargaining. Bad faith bargaining must be evaluated from the totality of the circumstances and can include a refusal to bargain over mandatory subjects, evidence of a rush to impasse, and insisting on a prohibited subject of bargaining. *See Ch. 10.*

County of Riverside (2014) PERB Dec. No. 2360-M. Employer could not set arbitrary deadline for end of negotiations to implement its last, best, and final offer before previously negotiated step increases took effect. Employer could have changed its economic proposal to account for increased costs of the step increases. *See Chs. 10 and 12.*

County of Santa Clara (2013) PERB Dec. No. 2321-M. The Board overruled

prior cases requiring a union to first demand to bargain effects as a precondition to enforcing an employer's duty to provide notice and an opportunity to bargain. The Board held that where no notice is provided by the employer, the union is excused from demanding to bargain over that *fait accompli*. **See Ch. 10.**

Santa Clara County Correctional Peace Officers' Assn. v. County of Santa Clara (2014) 224 Cal. App. 4th 1016. County acted within its reserved management rights in a memorandum of understanding when it reduced working hours after allowing a union to meet and confer and the union had no obligation under the MOU to file a grievance regarding a negotiable topic. **See Ch. 12.**

Scope of Bargaining

City of Escondido (2013) PERB Dec. No. 2311-M. City had duty to meet and confer over decision to lay off full-time code enforcement officers when layoffs resulted in transfer of their work to part-time code enforcement officers outside the bargaining unit. **See Chs. 10, 11, and 41.**

City of Sacramento (2013) PERB Dec. No. 2351-M. City had duty to meet and confer over decision to lay off supervising dispatchers when layoffs resulted in transfer of their work to dispatchers (including supervising dispatchers who demoted in lieu of layoff) outside the bargaining unit. **See Chs. 10, 11, and 42.**

Los Angeles Unified School District (2013) PERB Dec. No. 2326. A bargaining proposal that would give the employer complete discretion over a negotiable subject during the term of the collective bargaining agreement is within the scope of representation and therefore the employer may insist upon it to impasse. Nonetheless, because such proposals are inherently destructive of collective bargaining, they can-

not be implemented by the employer on impasse. **See Chs. 11 and 12.**

Impasse Resolution

County of Contra Costa (2014) PERB Order No. Ad-410-M. MMBA fact-finding procedures apply to all disputes over negotiable subjects, not just negotiations for a new or successor MOU. **See Ch. 12.**

Protected Employee Rights and Activities

Coachella Valley Unified School District (2013) PERB Dec. No. 2342. Reporting that teachers cheated in administration of standardized tests is not protected activity under EERA. **See Chs. 15 and 41.**

County of Orange (2013) PERB Dec. No. 2350-M/**Palo Verde Unified School District** (2013) PERB Dec. No. 2337. Once a charging party establishes a prima facie case of retaliation, the respondent must prove (1) that it had an alternative non-discriminatory reason for the challenged action; and (2) that it acted because of this alternative non-discriminatory reason and not because of the employee's protected activity. **See Ch. 15.**

Regents of the University of California (2013) PERB Dec. No. 2314-H. A prima facie case of retaliation was established based on the employer's imposition of a more onerous split shift schedule on the employee after he told his supervisor he would go to the union to fight the original schedule change. **See Ch. 15, 41.**

Discipline and Discharge

Public Safety Officers Procedural Bill of Rights: *Quezada v. City of Los Angeles* (2014) 222 Cal. App. 4th 993. PSOBR requires that interrogation be done at reasonable time, preferably when officer is on duty or during waking hours, unless seriousness of investigation requires otherwise. **See Ch. 16.**

Richardson v. City and County of San Francisco Police Comm'n (2013) 214 Cal. App. 4th 671. Under PSOBR, one-year period to complete investigation was tolled during 53 days department had an open criminal investigation into same allegations of misconduct. As a result of tolling, disciplinary charges filed one year and 22 days after discovery were timely. Department need not show it was continuously investigating the case during the 53-day period for tolling to apply. **See Ch. 16.**

Legislation. Effective January 1, 2014, Gov. Code § 3305.5 was amended to prohibit punitive action solely because an officer's name is on the *Brady* list. Punitive action may be taken for conduct that caused officer's name to be placed on *Brady* list. **See Ch. 16.**

Certificated Employees: *Grace v. Beaumont Unified School Dist.* (2013) 216 Cal. App. 4th 1325. A probationary employee's receipt of multiple forms of actual notice of her non-reelection by the March 15th deadline was sufficient to satisfy the requirements of Educ. Code § 44929.21, even though the employee had not received the school district's written non-reelection notice by March 15th. **See Ch. 16.**

San Diego Unified School Dist. v. Commission on Professional Competence (2013) 214 Cal. App. 4th 1120. In reviewing Commission's decision on teacher discipline via writ of administrative mandamus, the trial court must give "great weight" to the Commission's findings on witness credibility. **See Ch. 16.**

Classified Employee: *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal. App. 4th 169. Amendment of charges against employee, even if made during the administrative hearing, do not violate due process if the employee has adequate opportunity to review and re-

spond to the charges. Facts that may be barred by an applicable statute of limitations are still admissible during the hearing to assess the proper level of punishment, credibility, and bias. **See Ch. 16.**

Employee Organization Rights

County of Los Angeles v. Los Angeles County Employee Relations Com. (2013) 56 Cal. App. 4th 905. Union request for employees' home addresses and phone numbers is presumptively valid and burden is on employer to prove that the information is not relevant or to supply adequate reasons why the information cannot be supplied. The balancing of interests generally favors disclosure even though there may be a privacy interest in the information. **See Chs. 10, 30, and 31.**

Legislation—MMBA: Effective January 1, 2014, Gov. Code § 3505.3 was amended to require reasonable paid release time for employee to testify or serve as union's designated representative at a PERB proceeding, or civil service or personnel commission proceeding. **See Ch. 30.**

Organizational Security and Financial Disclosure

California School Employees Association & Its Chapter 47 (2014) PERB Dec. No. 2355. Under Gov. Code § 3546.5, a union must make its annual financial report available to members within 60 days of the end of the fiscal year. A member's failure to request the report within the 60-day period does not waive the member's right to the report. **See Ch. 31.**

Enforcement of Public Sector Labor Agreements

City of Los Angeles v. Superior Court (2013) 56 Cal. App. 4th 1086. Arbitration of employee grievances challenging furlough program as being in violation of the MOU does not involve an unlawful delega-

tion of the city council's discretionary salary-setting and budget-making authority. *See Ch. 35.*

Accommodating the Arbitration Process: Limits on PERB's Jurisdiction

Legislation—MMBA: Effective January 1, 2014, Gov. Code § 3505.8 makes arbitration agreements pursuant to MMBA enforceable under the California Arbitration Act. PERB will place unfair practice charge in abeyance if dispute is subject to final and binding arbitration, and dismiss the charge when arbitration is complete. *See Chs. 35 and 36.*

Practice and Procedure in PERB Unfair Practice Cases

County of Fresno (2014) PERB Dec. No. 2352-M. When parties have fully litigated an unfair practice charge and then reach a global settlement, PERB will not

allow the charging party to withdraw the charge without prejudice. *See Ch. 41.*

Los Angeles Unified School District (2014) PERB Dec. No. 2359. Statute of limitations is an affirmative defense that must be pled and proven by the respondent; failure to plead the defense in the answer waives the defense. *See Ch. 41.*

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<input type="checkbox"/>	Title page thru xxiii	Title page thru xxiii
<input type="checkbox"/>	5-7 thru 5-11	5-7 thru 5-11
<input type="checkbox"/>	5-29	5-29 thru 5-30.1
<input type="checkbox"/>	6-5 thru 6-9.	6-5 thru 6-10.1
<input type="checkbox"/>	6-19 thru 6-21	6-19 thru 6-21
<input type="checkbox"/>	10-1 thru 10-7	10-1 thru 10-8.1
<input type="checkbox"/>	10-17 thru 10-24.3	10-17 thru 10-24.3
<input type="checkbox"/>	10-35 thru 10-57	10-35 thru 10-58.3
<input type="checkbox"/>	11-27.	11-27 thru 11-28.1
<input type="checkbox"/>	11-55.	11-55 thru 11-56.1
<input type="checkbox"/>	11-73 thru 11-81	11-73 thru 11-82.1
<input type="checkbox"/>	12-1 thru 12-19	12-1 thru 12-21
<input type="checkbox"/>	15-13 thru 15-29	15-13 thru 15-30.1
<input type="checkbox"/>	15-59.	15-59 thru 15-60.1
<input type="checkbox"/>	15-69.	15-69 thru 15-70.1
<input type="checkbox"/>	16-1 thru 16-3	16-1 thru 16-3
<input type="checkbox"/>	16-19 thru 16-21	16-19 thru 16-22.1
<input type="checkbox"/>	16-45 thru 16-53	16-45 thru 16-54.3
<input type="checkbox"/>	16-89 thru 16-91	16-89 thru 16-92.1
<input type="checkbox"/>	16-107 thru 16-108.1	16-107 thru 16-108.3
<input type="checkbox"/>	16-135 thru 16-145	16-135 thru 16-145
<input type="checkbox"/>	17-31 thru 17-33	17-31 thru 17-35
<input type="checkbox"/>	30-19 thru 30-23	30-19 thru 30-24.1
<input type="checkbox"/>	31-3	31-3
<input type="checkbox"/>	31-45.	31-45 thru 31-46.1
<input type="checkbox"/>	31-69 thru 31-71	31-69 thru 31-71
<input type="checkbox"/>	32-19 thru 32-21	32-19 thru 32-22.1
<input type="checkbox"/>	35-5 thru 35-7	35-5 thru 35-8.1
<input type="checkbox"/>	36-1 thru 36-7	36-1 thru 36-8.1
<input type="checkbox"/>	41-3 thru 41-17	41-3 thru 41-18.1
<input type="checkbox"/>	41-35 thru 41-37	41-35 thru 41-38.1
<input type="checkbox"/>	41-47 thru 41-59	41-47 thru 41-61
<input type="checkbox"/>	42-6.1 thru 42-13	42-7 thru 42-14.1
<input type="checkbox"/>	TC-1 thru TC-35	TC-1 thru TC-35
<input type="checkbox"/>	TA-1 thru TA-27	TA-1 thru TA-25
<input type="checkbox"/>	TS-1 thru TS-27	TS-1 thru TS-27
<input type="checkbox"/>	I-1 thru I-73	I-1 thru I-71

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